



House of Representatives

General Assembly

File No. 223

February Session, 2006

Substitute House Bill No. 5797

House of Representatives, March 29, 2006

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING DIGITAL MEDIA AND MOTION PICTURE DEVELOPMENT IN THE STATE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2006*) (a) There is established the
- 2 Connecticut Office of Digital Media and Motion Pictures. Such office
- 3 shall be within the Connecticut Commission on Culture and Tourism.
- 4 The office shall be administered by an executive director, who shall be
- 5 appointed by the Connecticut Digital Media and Motion Picture
- 6 Commission established pursuant to section 4 of this act.
- 7 (b) The Connecticut Commission on Culture and Tourism shall
- 8 provide resources necessary for the office to perform its tasks under
- 9 the provisions of sections 2, 3, 9 and 10 of this act.
- 10 (c) The office shall have the following powers and duties:
- 11 (1) To promote the use of Connecticut locations, structures, facilities
- 12 and services for the production and post-production of all digital

13 media, motion pictures and any other media-related products;

14 (2) To provide support services to visiting and in-state production
15 companies, including assistance to digital media and motion picture
16 producers in securing permits from state agencies, authorities or
17 institutions or municipalities or other political subdivisions of the
18 state;

19 (3) To develop and update an on-line resource library concerning
20 the many possible state sites which are suitable for production;

21 (4) To develop and update an on-line and printed production
22 manual of available facilities and services in the state;

23 (5) To conduct and attend trade shows and production workshops
24 to promote Connecticut locations and facilities;

25 (6) To implement the tax credits provided for in sections 8 to 10,
26 inclusive, of this act;

27 (7) To formulate and propose guidelines for state agencies for a "one
28 stop permitting" process, for matters including, but not limited to, the
29 use of state roads and highways, the use of state-owned real or
30 personal property for production activities and the conduct of
31 regulated activities, and to hold workshops to assist state agencies in
32 implementing such process;

33 (8) To formulate and recommend to municipalities model local
34 ordinances to assist production activities, including, but not limited to,
35 "one stop permitting" of digital media, motion picture and other
36 production activity to be conducted in a municipality, and to hold
37 workshops to assist municipalities in implementing such ordinances;

38 (9) To accept any funds, gifts, donations, bequests or grants of funds
39 from private and public sources for the purposes of the activities
40 relating to the Connecticut Office of Digital Media and Motion
41 Pictures;

42 (10) To request and obtain from any state agency, authority or
43 institution or any municipality or other political subdivision of the
44 state such assistance and data as will enable the office to carry out the
45 purposes of the activities relating to the Connecticut Office of Digital
46 Media and Motion Pictures;

47 (11) To assist and promote cooperation among all segments of
48 management and labor that are engaged in the activities of the
49 Connecticut Office of Digital Media and Motion Pictures; and

50 (12) To take any other administrative action which may improve the
51 position of the state's digital media and motion picture production
52 industries in national and international markets.

53 (d) On or before January 15, 2007, and annually thereafter, the
54 executive director of the Connecticut Office of Digital Media and
55 Motion Pictures shall submit a report to the Connecticut Digital Media
56 and Motion Picture Commission and to the General Assembly on the
57 activities of the office and the estimated direct and indirect economic
58 impact of all digital media, motion pictures and related production
59 activity in the state, during the preceding calendar year. Each report
60 shall also include an analysis of the impact on the state of each
61 qualified production, as defined in section 8 of this act.

62 Sec. 2. (NEW) (*Effective July 1, 2006*) Notwithstanding any provision
63 of the general statutes, each state agency, department or institution
64 issuing a request for proposals for any digital media, motion picture or
65 related production activity shall, at the time of such issuance, transmit
66 a copy of such request for proposals to the Connecticut Office of
67 Digital Media and Motion Pictures. The Connecticut Commission on
68 Culture and Tourism shall notify the executive head of each state
69 agency of the requirements of this section.

70 Sec. 3. (*Effective July 1, 2006*) There is established an account within
71 the General Fund to be known as the "Connecticut Office of Digital
72 Media and Motion Pictures account". Any funds received by the state
73 as the result of an activity originated or sponsored by the Connecticut

74 Office of Digital Media and Motion Pictures, including, but not limited
75 to, advertising revenue or payments from film premieres or screenings,
76 or other film or video products, shall be deposited in the account. All
77 moneys in said account shall be held separate and apart from all other
78 moneys, funds and accounts. Investment earnings from any moneys in
79 the account shall be credited to the account and shall become part of
80 the assets of the account. Any balance remaining in the account at the
81 end of any fiscal year shall not lapse and shall be available for use for
82 the fiscal year next succeeding. Any moneys in said account shall be
83 used by the Connecticut Office of Digital Media and Motion Pictures to
84 carry out activities relating to the office.

85 Sec. 4. (NEW) (*Effective July 1, 2006*) (a) There is established a
86 Connecticut Digital Media and Motion Picture Commission. The
87 commission shall be within the Connecticut Commission on Culture
88 and Tourism.

89 (b) The commission shall consist of the following members:

90 (1) Five appointed by the Governor, two of whom shall be either
91 broadcasting executives, attorneys with broadcasting, digital media or
92 motion picture production experience, corporate communications
93 executives, executives of advertising agencies that produce digital
94 media or motion picture projects, or executives of audio or
95 postproduction facilities relating to digital media and motion pictures,
96 and three of whom shall be other professionals whose primary
97 occupation and experience relates directly to the production of digital
98 media or motion pictures;

99 (2) Two appointed by the president pro tempore of the Senate, one
100 of whom shall be a digital media or motion picture producer and one
101 of whom shall be either a broadcasting executive, an attorney with
102 broadcasting, digital media or motion picture production experience, a
103 corporate communications executive, an executive of an advertising
104 agency that produces digital media or motion picture projects, or an
105 executive of an audio or postproduction facility relating to digital
106 media and motion pictures;

107 (3) One appointed by the majority leader of the Senate, who shall be
108 a digital media or motion picture producer;

109 (4) One appointed by the minority leader of the Senate, who shall be
110 a director, writer or a performer in digital media or motion pictures;

111 (5) Two appointed by the speaker of the House of Representatives,
112 one of whom shall be a working professional in the digital media or
113 motion picture production field and one of whom shall be another
114 professional whose primary occupation and experience relates directly
115 to the production of digital media or motion pictures;

116 (6) One appointed by the majority leader of the House of
117 Representatives, who shall be a director, writer or performer in the
118 digital media and motion picture production fields; and

119 (7) One appointed by the minority leader of the House of
120 Representatives, who shall be a representative of academia.

121 (c) The Governor shall appoint from among the members of the
122 commission a chairperson who shall serve at the pleasure of the
123 Governor.

124 (d) The term of each appointed member of the commission
125 beginning on or after July 1, 2006, shall be coterminous with the term
126 of the appointing authority or until a successor is chosen, whichever is
127 later. Vacancies shall be filled by the appointing authority.

128 (e) The members of the commission shall receive no compensation
129 for their services but shall be reimbursed for any necessary expenses
130 incurred in the performance of their duties.

131 (f) The commission shall organize itself in such a manner as it
132 deems desirable and necessary. Seven members of the commission
133 shall constitute a quorum and the affirmative vote of a majority of the
134 members present at a meeting shall be necessary to take any action or
135 adopt any motion or resolution.

136 Sec. 5. (NEW) (*Effective July 1, 2006*) The commission shall:

137 (1) Monitor the activities of the Connecticut Office of Digital Media
138 and Motion Pictures and make recommendations to the executive
139 director to improve state services for the state's digital media and
140 motion picture production industries;

141 (2) Make recommendations to the Governor, the General Assembly
142 and state agencies concerning administrative actions which it deems
143 necessary or helpful to improve such industries;

144 (3) Appoint the executive director of the Connecticut Office of
145 Digital Media and Motion Pictures. The executive director shall have
146 substantial experience in the film, video and media fields and shall be
147 exempt from the classified service. The commission shall design and
148 implement job evaluation criteria for the executive director. The
149 commission shall propose job evaluation criteria for the following
150 positions in such office: (A) Production coordinator, (B) location
151 specialist, (C) tax credit administrator, (D) marketing and business
152 developer, (E) administrative associate, (F) administrative assistant,
153 (G) a work force development coordinator, and (H) any other positions
154 relating to the facilitation or implementation of the activities of the
155 Connecticut Office of Digital Media and Motion Pictures. Some of such
156 positions may be exempt from the classified service;

157 (4) Identify and make recommendations to state agencies and
158 municipalities on revision to actions or procedures which may have a
159 negative impact on digital media and motion picture production in the
160 state or that may appear to discourage or impose unnecessarily costly
161 burdens on such production in the state; and

162 (5) Assist and advise the Connecticut Office of Digital Media and
163 Motion Pictures.

164 Sec. 6. (NEW) (*Effective July 1, 2006*) On or before January 31, 2007,
165 and annually thereafter, the commission shall make a report on the
166 activities of the commission to the Governor, the General Assembly

167 and the joint standing committees of the General Assembly having
168 cognizance of matters relating to commerce and finance, revenue and
169 bonding. The report shall include a summary of the activities of the
170 commission for the preceding year, a copy of the report submitted to
171 the commission by the executive director of the Connecticut Office of
172 Digital Media and Motion Pictures and any recommendations for
173 legislation as may be necessary to promote the purposes of sections 1
174 to 10, inclusive, of this act.

175 Sec. 7. (NEW) (*Effective July 1, 2006*) The Connecticut Commission
176 on Culture and Tourism, with the advice of the Connecticut Digital
177 Media and Motion Picture Commission, shall adopt regulations, in
178 accordance with the provisions of chapter 54 of the general statutes, to
179 carry out the provisions of sections 1 to 10, inclusive, of this act.

180 Sec. 8. (NEW) (*Effective from passage and applicable to taxable years*
181 *commencing on or after January 1, 2006*) As used in this section and
182 sections 9 and 10 of this act:

183 (1) "Qualified production" means the process of producing any type
184 of entertainment content which shall include motion pictures;
185 documentaries; long-form specials, mini-series, series, music videos
186 and interstitials; television programming; interactive television;
187 interactive games; videogames; commercials; infomercials and any
188 format of digital media created primarily for distribution or exhibition
189 to the general public. The term "qualified production" includes any
190 trailer, pilot, video teaser or demo created primarily to stimulate the
191 sale, marketing, promotion or exploitation of future investment in
192 either a product or a qualified production by any means and media in
193 any digital media format, film or videotape, provided such program
194 meets all the criteria of a qualified production. The term "qualified
195 production" shall not include (A) any ongoing production created
196 primarily as news, weather or financial market reports, except for an
197 initial pilot, demo or prototype presentation or informational series
198 programming relating to any qualified production, or (B) any
199 production containing obscene material or performances.

200 (2) "Eligible production company" means a corporation, partnership,
201 limited liability company or other business entity engaged in the
202 business of producing qualified productions on a one-time or ongoing
203 basis and qualified by the Secretary of the State to engage in business
204 in the state.

205 (3) "Eligible development and production costs" means all cash
206 expenditures relating to a qualified production, in whole or in part in
207 the state, relating to development, preproduction, production and
208 postproduction costs of a qualified production including: (A)
209 Expenditures for optioning or purchase of any intellectual property,
210 including, but not limited to, books, scripts, music or trademarks
211 relating to the development or purchase of a script, screenplay or
212 format, provided (i) the holder of the intellectual property is either a
213 company authorized to do business in the state or an individual who is
214 a resident of the state of Connecticut, (ii) seventy-five per cent of the
215 qualified production based on the intellectual property is produced in
216 the state, and (iii) the development costs are less than thirty-five per
217 cent of the actual cash expenditures within the budget allocated for the
218 production of the qualified production in the state. Such costs shall
219 include all expenditures generally associated with the optioning or
220 purchase of intellectual property, including option money, agent fees
221 and attorney fees relating to the transaction and shall exclude any and
222 all deferrals, deferments, royalties, profit participation or recourse or
223 nonrecourse loans which the eligible production company may
224 negotiate in order to obtain the rights to the intellectual property; (B)
225 expenditures in the form of either compensation or purchases paid
226 directly to individuals or companies authorized to do business in the
227 state, including, but not limited to, production work, production
228 equipment, production software, all postproduction work,
229 postproduction equipment, postproduction software, set design, set
230 construction, props, lighting, wardrobe, makeup, makeup accessories,
231 special effects, visual effects, audio effects, film processing, music,
232 sound mixing, editing, location fees, soundstages and any and all other
233 costs or services directly incurred in the state in connection with a
234 state-certified qualified production. "Eligible development and

235 production costs" shall not include the following: (i) Media buys,
236 promotional events or gifts or public relations associated with the
237 promotion or marketing of any qualified production, (ii) deferrals or
238 deferments leveraged or profit participation costs relating to any and
239 all personnel associated with any and all aspects of the production,
240 including, but not limited to, producer fees, director fees, talent fees
241 and writer fees, and (iii) costs relating to the transfer of the production
242 tax credits and any amounts paid to persons or businesses as a result
243 of their participation in profits from the exploitation of the qualified
244 production. "Eligible development and production costs" shall include
245 (I) any and all preproduction, production or postproduction costs
246 relating to the creation of trailers, marketing videos, commercials,
247 point-of-purchase videos and any and all content created on film or
248 digital media, including the duplication of films, videos, CDs, DVDs
249 and any and all digital files now in existence and those yet to be
250 created for mass consumer consumption, and (II) the purchase, by a
251 company in the state, of any and all equipment relating to the
252 duplication or mass market distribution of any content from within the
253 state by any digital media format which is now in use and those
254 formats yet to be created for mass consumer consumption.

255 (4) "State certified production" means a qualified production
256 produced by an eligible production company that is in compliance and
257 is authorized to conduct business in the state, and that has been
258 approved by the Connecticut Office of Digital Media and Motion
259 Pictures as qualifying for a production tax credit under sections 9 and
260 10 of this act.

261 Sec. 9. (NEW) (*Effective from passage and applicable to taxable years*
262 *commencing on or after January 1, 2006*) (a) (1) An eligible production
263 company producing a qualified production shall be allowed a
264 production tax credit against the tax imposed under chapter 208 of the
265 general statutes as follows: (A) For a qualified production incurring at
266 least fifty thousand dollars of eligible production and development
267 costs, a credit of twenty-five per cent of such costs, and (B) for a
268 qualified production incurring at least one million dollars of eligible

269 production costs, a credit of thirty per cent of such costs. Any credit
270 under this subdivision shall be applied within three years of issuance
271 and may be sold, assigned or otherwise transferred, in whole or in
272 part, to one or more taxpayers except where otherwise noted.

273 (2) A company or individual investors reinvesting revenue derived
274 from a qualified production in another qualified production shall be
275 eligible for a production tax credit in an amount equal to fifty per cent
276 of the actual reinvestment, not exceeding their initial investment. Any
277 credit under this subdivision shall be nontransferable, and may not
278 exceed the taxes due from such company or invested in the year that
279 they are applied.

280 (3) The production tax credit allowed under this subsection shall be
281 against the actual tax for the taxable year in which final certificate for
282 the state-certified production is made by the Connecticut Office of
283 Digital Media and Motion Pictures pursuant to section 10 of this act.

284 (4) Any production tax credit allowed under this subsection is
285 nonrefundable and any such credit not applied in any year may be
286 carried forward and used to offset the tax under chapter 208 of the
287 general statutes in the succeeding three years, except where otherwise
288 provided.

289 (b) (1) An eligible production company producing a qualified
290 production shall be allowed a wage tax credit against the tax imposed
291 under chapter 208 of the general statutes in an amount equal to fifty
292 per cent of the per cent of Connecticut residents employed on a
293 qualified production.

294 (2) Any wage tax credit allowed under this section is nonrefundable,
295 nontransferable and may be carried over a three-year period from the
296 date that credits are authorized and may not exceed the tax liability of
297 the eligible production company in the year in which they are applied.

298 Sec. 10. (NEW) (*Effective from passage and applicable to taxable years*
299 *commencing on or after January 1, 2006*) (a) The Connecticut Office of

300 Digital Media and Motion Pictures shall establish and administer a
301 certification process for eligible production companies to claim the
302 production tax credit and wage tax credit allowed under section 9 of
303 this act.

304 (b) Upon receipt of a production budget for a production
305 demonstrating that such production meets the requirements of section
306 9 of this act, the Connecticut Office of Digital Media and Motion
307 Pictures shall issue an initial certification of the production as a
308 qualified production of an eligible production company. The initial
309 certification shall include a unique certificate number for each
310 qualified production and shall indicate that the certification is subject
311 to a final certification by the Connecticut Office of Digital Media and
312 Motion Pictures upon completion of the production.

313 (c) Not more than six months after completion of the qualified
314 production, the eligible production company shall submit a detailed
315 list of the eligible production costs for the qualified production to the
316 Connecticut Office of Digital Media and Motion Pictures. The office
317 shall review such eligible production costs and, after verifying that
318 such costs meet the requirements of section 9 of this act, issue a final
319 certification of the qualified production to the eligible production
320 company.

321 (d) If a taxpayer sells, assigns or otherwise transfers a production
322 tax credit to another taxpayer, the transferor and the transferee shall
323 jointly submit written notification of such transfer to the Connecticut
324 Office of Digital Media and Motion Pictures not more than thirty days
325 after such transfer. The notification shall include the certificate
326 number, the date of the transfer, the amount of the production tax
327 credit transferred, the production tax credit balance before and after
328 the transfer, the tax identification numbers for both the transferor and
329 the transferee, and any other information required by the Connecticut
330 Office of Digital Media and Motion Pictures.

331 (e) Any tax credit under this section not used by a production
332 company shall be recaptured in accordance with regulations adopted

333 under subsection (f) of this section, except that any amount of such
 334 recaptured credit has not been paid to the Commissioner of Revenue
 335 Services on or before the due date, such amount shall bear interest at
 336 the rate of one per cent per month or fraction thereof from such due
 337 date to the date of payment.

338 (f) The Connecticut Office of Digital Media and Motion Pictures
 339 shall adopt regulations in accordance with the provisions of chapter 54
 340 of the general statutes to implement this section. Such regulations shall
 341 include provisions to applications for a certificate and for recapture of
 342 any unused production tax credit.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2006	New section
Sec. 2	July 1, 2006	New section
Sec. 3	July 1, 2006	New section
Sec. 4	July 1, 2006	New section
Sec. 5	July 1, 2006	New section
Sec. 6	July 1, 2006	New section
Sec. 7	July 1, 2006	New section
Sec. 8	<i>from passage and applicable to taxable years commencing on or after January 1, 2006</i>	New section
Sec. 9	<i>from passage and applicable to taxable years commencing on or after January 1, 2006</i>	New section
Sec. 10	<i>from passage and applicable to taxable years commencing on or after January 1, 2006</i>	New section

CE Joint Favorable Subst.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 07 \$	FY 08 \$
Commission Culture and Tourism	GF - Cost/Revenue	See Below	See Below
Department of Revenue Services	GF - Revenue Loss	See Below	See Below
Department of Revenue Services	GF - Cost	70,000	None

Note: GF=General Fund

Municipal Impact: None

Explanation

Tax Credits

Establishing corporation business tax credits for digital media and motion picture developed in Connecticut will result in a revenue loss to the degree that such activities occur in the state. However, it should be noted that without these tax credits the production companies might not choose to shoot in Connecticut so the state would not have the opportunity to collect the revenue.

It is anticipated that the Department of Revenue Services will need \$70,000 to cover one-time computer programming costs in FY 07 to incorporate the new tax credit program into the agency's integrated tax administration system.

Further Explanation

While the number and budget of future in-state productions cannot be determined, the table below illustrates the potential impact of a \$10.0 million production. The information is based on an analysis

prepared by the Rhode Island legislature on a 2005 bill¹ with similar provisions. It shows that such a production could result in a net loss of \$3.5 million in state revenue.

Projected Impact of a \$10 million Digital Media or Movie Production

Estimated Revenue Resulting From an Increase in Gross State Product

Increase in CT Gross State Product (GSP) ¹	\$16,500,000
Ratio of Tax Revenues to GSP ²	<u>7.10%</u>
Revenue Gain from increase in GSP	\$1,171,500

Estimate Revenue Gain from an Increase in Earnings

Increase in-state earnings ³	\$3,856,000
Ratio of Income Tax Revenue to Earnings ⁴	<u>6.82%</u>
Income Tax Revenue Gain	\$262,979

Total Revenue Gain for General Fund Taxes \$1,434,479

Estimated Revenue Loss from Motion Picture Tax Credits ⁵

Production Tax Credit (30%)	\$3,000,000
Wage Credit (50%)	<u>2,000,000</u>
Revenue Loss for Motion Picture Tax Credits	\$5,000,000

Estimated Net Revenue Loss \$3,565,521

Notes:

The figure assumes the impact of a \$10 million production will be about the same as it is in Rhode Island. Rhode Island estimates that a \$10 million production would produce \$16.5 million in gross state product (GPS). Rhode Island's estimate was derived by using the Bureau of Economic Analysis (BEA) Regional Input-Output Modeling System (RIMS II) for Rhode Island.

The ratio of tax revenues to gross state product (GSP) shows total General Fund revenue expected in FY 06 as a percentage of CT's GSP.

The figure assumes the impact of a \$10 million production will be about the same as it is in Rhode Island. Rhode Island estimates that a \$10 million production would produce \$3.8 million in additional earnings. Rhode Island's estimate was derived by using the Bureau of Economic Analysis (BEA) Regional Input-Output Modeling System (RIMS II) for Rhode Island

¹ In 2005, Rhode Island enacted H 6201, An Act Relating to Film and Television Tax Credit. The act provides tax credits for investing, producing, and hiring state residents for the production of motion pictures.

The ratio of Income Tax Revenues to Earnings is the ratio of personal income tax revenue anticipated in FY 06 to CT's total wage base.

The figures do not include the impact of reinvestment tax credits. If a production qualifies for reinvestment tax credits, the revenue loss would be higher.

The bill establishes the Connecticut Office of Digital Media and Motion Pictures (the office) within the Connecticut Commission on Culture and Tourism (CCCT). The CCCT currently has many of the same powers and duties for films and media related products as the bill assigns to the new office. The bill requires the CCCT to provide necessary resources for new notification requirements, new tasks related to the new account within the General Fund, and the tax credit program established in the legislation. The CCCT does not have resources to carry out the new requirements.

The bill also provides that the funds deposited within the non lapsing account established in the bill, the "Connecticut Office of Digital Media and Motion Pictures account" are to be used to carry out the office's activities. These monies are comprised of advertising revenues, payments from film or video products, or investment earnings. It is not anticipated that the revenues that will be credited to the account will be sufficient to fund the requirements within the bill. Initial revenue is anticipated to be minimal.

The bill requires that an executive director be appointed to head the office and that additional positions include: a production coordinator, a location specialist, a tax credit administrator, a marketing and business developer, an administrative associate, an administrative assistant, a work force development coordinator, and any other positions relating to the programs of the office. It is estimated that approximately \$200,000 in additional funds would be required to hire the identified positions in FY 07 plus additional costs for fringe benefits² and an additional \$80,000 in associated other expenses for

² The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The estimated first year

promotional and marketing activities, the web based location data base and the economic impact study. These costs reflect the net increase over current funds available within CCCT that are used for these purposes.

The bill also creates a 13 member Connecticut Digital Media and Motion Picture Commission, within CCCT, to oversee the office. CCCT must provide the Commission with the resources to carry out its duties. The members are to be reimbursed for necessary expenses. No resources are provided to CCCT for these purposes.

The Out Years

The fiscal impact of the tax provisions will depend on the success that this bill has on attracting productions to Connecticut but could be very significant given the increase in production activity other states have experienced with similar tax incentives.

The annualized ongoing costs identified above would continue into the future subject to inflation.

fringe benefit rate as a percentage of payroll is 23.6%, effective July 1, 2005. The first year fringe benefit costs for new positions do not include pension costs. The state's pension contribution is based upon the prior year's certification by the actuary for the State Employees Retirement System (SERS). The SERS 2005-06 fringe benefit rate is 34.7%, which when combined with the non pension fringe benefit rate would total 58.3%.

OLR Bill Analysis
sHB 5797**AN ACT CONCERNING DIGITAL MEDIA AND MOTION PICTURE DEVELOPMENT IN THE STATE.****SUMMARY:**

This bill establishes corporation tax credits for producing films and digital media in Connecticut. It allows credits for (1) qualifying film and digital media production, preproduction, and postproduction expenses; (2) reinvesting revenue from one qualified production in another; and (3) wages paid on qualifying productions. The production expense credit can be sold or transferred; the others cannot. All may be carried forward for up to three years.

The bill creates the Connecticut Office of Digital Media and Motion Pictures (i.e., the office) to promote Connecticut as a venue for producing films and digital media and to administer and approve applicants for the tax credits. It establishes a separate, nonlapsing account within the General Fund to fund the office. The bill also creates a 13-member Connecticut Digital Media and Motion Picture Commission (i.e., the commission), appointed by the governor and legislative leaders, to oversee the office. Both the commission and the office are within the Connecticut Commission on Culture and Tourism (CCCT), which must provide them with the resources they need to carry out their duties.

EFFECTIVE DATE: The tax credits are effective on passage and apply to tax years starting on or after January 1, 2006. The remaining provisions are effective July 1, 2006.

CONNECTICUT OFFICE OF DIGITAL MEDIA AND MOTION PICTURES**§ 1 - Powers and Duties**

The bill establishes the office within the CCCT. It gives the office most of the same duties that current law, which the bill does not change, assigns to the CCCT. The bill requires the office to:

1. promote Connecticut locations, structures, facilities, and services for production and postproduction of movies, digital media, and other media-related products;
2. support visiting and Connecticut production companies and help producers to get permits from the state, municipalities, and other government entities;
3. develop and update an on-line resource library of state sites suitable for production and an on-line and printed production manual of available facilities and services in Connecticut;
4. conduct and attend trade shows and production workshops to promote Connecticut locations and facilities;
5. administer the bill's tax credits;
6. develop and propose guidelines for, and hold workshops to help state agencies implement, a one-stop permitting process for such things as using state roads and highways and state-owned property for productions and conducting regulated activities;
7. develop and recommend to municipalities, and hold workshops on, model local ordinances for helping production activities, including one-stop permitting for such activities;
8. accept public and private gifts, funds, donations, bequests, and grants for its activities;
9. ask state agencies and authorities, municipalities, and other state political subdivisions for help and data that will enable the office to carry out its duties;

10. help and promote cooperation among management and labor engaged in the office's activities; and
11. take any other administrative action to improve the position of Connecticut's digital media and film production industries in national and international markets.

(COMMENT: The bill does not eliminate an existing statute that gives the CCCT many of the same powers and duties for films and other media-related products as the bill assigns to the new office (CGS § 10-417)).

§ 5 (3) - Executive Director and Other Personnel

The bill requires the office to be headed by an executive director appointed and evaluated by a new Commission on Digital Media and Motion Pictures that the bill also creates (see below). The executive director position is exempt from the classified service. The executive director must have substantial experience in the film, video, and media fields.

The bill also requires the office to have the following additional positions (1) production coordinator, (2) location specialist, (3) tax credit administrator, (4) marketing and business developer, (5) administrative associate, (6) administrative assistant, (7) workforce development coordinator, and (8) any other position to facilitate or implement the office's activities. The bill allows "some" of these positions to be exempt from classified service. (COMMENT: The bill does not specify how many or which of the positions are exempt or who decides.)

§ 1 (d) - Annual Report

Starting January 15, 2007, the executive director must submit an annual report to the Digital Media and Motion Picture Commission and the General Assembly on the office's activities and the estimated direct and indirect economic impact of all production activities in the state during the previous year. The report must also analyze the impact of each qualified production (see § 8 below) on the state.

§ 2 - State Agency Productions

The bill requires any state agency or institution that issues a request for proposals for film, media, or related production activity to send a copy to the office. The CCCT must notify state agency executive heads of the requirement.

§ 3 - Office of Digital Media and Motion Pictures Account

The bill establishes a separate account in the General Fund to hold any funds the state receives from activities the office originates or sponsors, including advertising revenue and payments from film screenings or premieres or from other film or video products. Investment earnings on the money in the account must also be credited to it. The office must use the money to carry out its activities. Any balance remaining at the end of a fiscal year does not lapse but must be carried forward to the following year and used for the same purposes.

CONNECTICUT DIGITAL MEDIA AND MOTION PICTURE COMMISSION

§ 4 - Members and Appointments

The bill establishes a 13-member commission within the CCCT. The governor and legislative leaders appoint the members as shown below.

Member(s)	Appointed by	Qualifications
2	Governor	Any of the following: <ul style="list-style-type: none"> • broadcasting executive • attorney with broadcasting, digital media, or movie production experience • corporate communications executive • executive of advertising agency that produces digital media or movie projects • executive of audio or postproduction facility related to movies and digital media
3	Governor	Other professionals whose primary occupation and experience relates directly to production of digital media or movies
1	Senate president pro tempore	Digital media or movie producer
1	Senate president pro tempore	Any of the following: <ul style="list-style-type: none"> • broadcasting executive • attorney with broadcasting, digital media, or

Member(s)	Appointed by	Qualifications
		movie production experience <ul style="list-style-type: none"> • corporate communications executive • executive of advertising agency that produces digital media or movie projects • executive of audio or postproduction facility related to movies and digital media
1	Senate majority leader	Digital media or movie producer
1	Senate minority leader	Director, writer, or performer in digital media or movies
1	House speaker	Working professional in digital media or movie production field
1	House speaker	Other professional whose primary occupation and experience relates directly to production of digital media or movie production
1	House majority leader	Director, writer, or performer in digital media and movie fields
1	House minority leader	Representative of academia

From among the members, the governor appoints the commission chairman, who serves at her pleasure. All other appointees serve terms that are coterminous with those of their appointing authorities or until a successor is chosen. Appointing authorities fill any vacancies. Members are not compensated but must be reimbursed for necessary expenses.

The bill requires the commission to organize itself as it considers necessary and desirable. Seven members are a quorum and a majority vote of those present and voting at a meeting may take any action or adopt any motion or resolution.

§ 5 - Powers and Duties

The commission must:

1. monitor the office's activities and recommend to its executive director ways to improve state services for digital media and motion picture industries in the state;
2. recommend necessary administrative actions to the governor,

the legislature, and state agencies;

3. appoint the office's executive director, design and implement job evaluation criteria for the executive director, and propose job evaluation criteria for the office's other positions;
4. identify and make recommendations to state agencies and municipalities concerning revisions in actions or procedures that could have a negative effect on digital media and movie production or that appear to discourage or impose unnecessarily costly burdens on production; and
5. advise and help the office.

§ 6 - Annual Report

The bill requires the commission, starting by January 31, 2007, to file an annual report on its activities with the governor, the General Assembly, and the Commerce and Finance, Revenue and Bonding committees. The report must summarize its activities for the previous year and include a copy of the report from the office's executive director and any recommended legislation.

§ 8 - PRODUCTIONS, COSTS, AND COMPANIES ELIGIBLE FOR TAX CREDITS

§ 8(1) - Qualified Productions

Only qualified productions are eligible for the bill's tax credits. These productions can be any type of entertainment production or content, with specified exceptions. Qualified productions include:

1. movies and documentaries;
2. long-form specials, mini-series, and series;
3. music videos and interstitials (internet advertisements that appear on or between webpages and require users to click on them to continue);

4. television programs and interactive television;
5. interactive games and videogames;
6. commercials and infomercials; and
7. any digital media format created primarily for public viewing or distribution.

Trailers, pilots, video teasers, and demos are eligible for credits if they are created primarily to stimulate, the sale, marketing, promotion, or exploitation of future investment in a “product” or qualified production. They may be in any digital media format, or on film or videotape as long “such program” meets all the criteria for a qualified production.

(**COMMENT:** (1) The bill does not define the term “product” so it is not clear what it includes. (2) The reference to “such program” meeting all requirements of a qualified production is unclear. Presumably, it is the teasers, pilots, video teasers, and demos that must meet the qualified production criteria. If so, the requirement appears circular since the bill does not specify criteria for qualified productions. Instead, it defines a qualified production by listing included and excluded types of productions. And it specifically includes teasers, pilots, video teasers, and demos in its list of qualified productions.)

Productions that contain obscene materials and performances do not qualify for credits. Ongoing programs created primarily as news, weather, or financial market reports are also excluded. But an initial pilot, demo, or prototype presentation of the latter type of show does qualify, as does any informational programming series relating to a qualified production.

§ 8 (2) - Eligible Production Company

A company may receive tax credits if it is in the business of producing one or more qualified productions and the secretary of the state authorizes it to do business here. It can be organized as a

corporation, partnership, limited liability company, or any other type of business entity.

§ 8 (3) - Eligible Development and Production Costs

The bill's tax credits are based on a percentage of eligible development and production costs for a qualified production. The bill defines eligible costs as all "cash expenditures" for all phases of a qualified production from development to post-production, if part those expenditures are made in Connecticut.

(COMMENT: It is not clear what "cash expenditures" covers. It could mean any monetary payments or it could mean only those made with currency.)

Eligible costs include expenses for optioning or buying intellectual property, such as books, scripts, music, or trademarks, related to developing or buying a script, screenplay, or format, if:

1. the intellectual property holder is either a Connecticut resident or company authorized to conduct business in Connecticut;
2. 75% of the production based on intellectual property is produced in Connecticut; and
3. the cost of developing the intellectual property is less than 35% of the "actual cash expenditures" in the qualified production's budget for production in Connecticut.

Eligible costs for optioning or buying the intellectual property include all expenses "generally" associated with such a transaction, including "option money," and agents' and attorneys' fees.

(COMMENT: The bill does not define the term "option money.")

Other eligible costs are expenses for compensation or purchases paid directly to people or companies authorized to do business in Connecticut, including for:

1. production and postproduction work, equipment, or software;
2. set design and construction;
3. props, lighting, wardrobe, makeup, and makeup accessories;
4. special, visual, and audio effects;
5. film processing;
6. music, sound mixing, and editing;
7. location fees; and
8. soundstages.

Also eligible are costs for (1) other services directly incurred in Connecticut for a qualified production approved for a credit under the bill and (2) the purchase, by a company in the state, of equipment for duplicating or distributing content from within Connecticut for mass market consumption via any digital media format currently in existence or later created.

(**COMMENT:** It is not clear whether 100% of all these covered expenses must occur in Connecticut. The bill explicitly requires only that “other” costs and services be directly incurred in Connecticut. On the other hand, expenses for the items listed in 1-8 above, though if paid to a company must be paid to one authorized to do business in Connecticut, could apparently be eligible even if incurred outside the state. Likewise, payments to individuals for the specified items do not appear to be restricted to Connecticut in any way since the secretary of the state does not authorize individuals to do business in the state.)

Finally, the bill makes preproduction, production, and post-production costs eligible for a credit if they are for creating (1) trailers, marketing videos, commercials, or point-of-purchase videos or (2) content on film or digital media, including duplicating films, videos, CDs, DVDs, or other types of digital files that already exist or are created in the future for mass consumer consumption.

The following costs are not eligible:

1. deferrals, deferments, royalties, profit participation, or recourse and nonrecourse loans that a production company negotiates to obtain intellectual property rights (nonrecourse loans are loans where the lender's only remedy for a borrower's default is to foreclose on the loan collateral);
2. media buys, promotional events, gifts, or public relations associated with promoting or marketing a qualified production;
3. deferral or deferments leveraged or profit participation costs relating to personnel associated with the production, including producer, director, talent, and writer fees;
4. transferring production tax credits; and
5. amounts paid to people or businesses because of their profit participation in the production.

(COMMENT: The phrase "deferral or deferments leveraged" is not clear, especially when use in conjunction with "personnel.")

§ 8 (4) - State-Certified Production

The bill defines a "state-certified production" as a qualified production produced by an eligible production company that is:

1. in compliance,
2. authorized to conduct business in Connecticut, and
3. approved by the state's digital media and motion picture office as qualifying for a production tax credit under the bill.

(COMMENT: The bill does not say what a company must be in compliance with, but presumably it is with the bill's requirements for eligible companies and qualified productions.)

TAX CREDITS

§ 9 (a) (1) - Credit for Production and Development Expenses

The bill gives film and other media production companies corporation tax credits equal to 25% or 30% of their eligible costs for qualified productions. The 25% credit applies to a company with at least \$50,000 and the 30% credit to companies with at least \$1 million in eligible costs. A company can sell, assign, or otherwise transfer all or part of these credits to one or more corporate taxpayers.

(COMMENT: Since a company with at least \$1 million of eligible costs also has at least \$50,000 of such costs, it is unclear whether such a company would receive a credit of 25% for its eligible costs up to \$1 million and 30% for those of \$1 million or more or if it would receive a credit of 30% of all its eligible costs.)

§ 9 (a) (2) - Credit for Reinvestment

The bill gives companies or individual investors that reinvest revenue from one qualified production in another a production tax credit of 50% of the reinvestment. The credit amount cannot exceed the initial investment or the amount of taxes due or invested in the year the credit is applied.

(COMMENT: Although it appears that the reinvestment credit, like the production expense credit, applies against the corporation tax, the bill does not explicitly say so. The corporation tax would not apply to an "individual investor" and this credit is not transferable, so it is not clear how an individual investor could benefit from the credit.)

§ 9 (b) - Wage Credit

The bill grants eligible production companies a nonrefundable corporation tax credit for wages the credit percentage is equal to 50% of the percentage of Connecticut residents employed on a qualified production. The credit cannot exceed the production company's tax liability in the year for which it is applied.

(COMMENT: The bill does not specify whether the percentage credit is to be applied to all of the wages the production company pays

or only to wages paid to Connecticut residents. It does not define a Connecticut resident nor does it establish any standards for their employment.)

§ 9 - Carry-Forward Periods

The production expense and reinvestment credits (which the bill refers to collectively as “production tax credits,”) are not refundable and must be used against corporation tax in the tax year in which the office issues final certificate for the production. The bill allows the production credits and the wage credit to be carried forward for three years. The wage credit may be carried forward from the date the credit is “authorized.”

(COMMENT: The bill’s carry-forward provisions are ambiguous. The production expense credits must apparently be applied within three years of “issuance.” But the bill also says that any production credit not applied in any year can be used to offset taxes in the succeeding three years. This appears to allow a credit to be used over more than three years as long as there is a year in which no credit was used. In addition, it is not clear what the difference is between the date a credit was issued and the date it was authorized. The former is the starting date of the carryforward for the production expense credit, while the latter date applies to the wage credit carryforward.)

TAX CREDIT ADMINISTRATION

§ 10 (a) (c) - Certifying Qualifying Productions and Eligible Costs

The bill requires the office to establish and administer a process for certifying production companies eligible to claim production and wage credits under the bill. The office must issue an initial certification indicating that a production is a qualified production by an eligible company. It must do this “upon receipt” of a budget for the production that demonstrates that it meet’s the bill’s requirements.

(COMMENT: It is not clear whether the office must evaluate the budget since it apparently must issue the eligibility certification as soon as it receives it.)

The office must issue a unique certification number for each qualified production and indicate that it is subject to final certification upon completion. Within six months after it completes a qualified production, the eligible production company must submit a detailed list of eligible production costs to the office. The office must review the costs and, after verifying that they meet the bill's requirements, issue a final certification for the production.

§ 10 (d) - Notice of Credit Transfers

If a taxpayer sells, assigns, or otherwise transfers a production tax credit to another taxpayer, both taxpayers must jointly submit a written notification to the office within 30 days after the transfer. The notice must include the credit certification number, transfer date, amount of the credit transferred, credit balance before and after the transfer, transferor's and transferee's tax identification numbers, and any other information the office requires

(COMMENT: (1) By using the general term "taxpayer," in this subsection, the bill appears to imply that credits could be transferred not only from an eligible production company to another company, but also from that transferee to another, and so on. Yet the bill is not explicit on this point. (2) In this section, the bill speaks of transferring a "production tax credit." But, as noted above, the reinvestment tax credit, which under the bill also appears to be a production tax credit, is not transferable.)

§ 10 (e) - Credit Recapture

The bill requires the office to recapture any production tax credits a production company does not use. The recapture must be according to a schedule the office adopts in regulations. It imposes interest at the rate of 1% per month on late payments of recaptured credits.

(COMMENT: The bill does not explicitly exclude from the recapture requirement the credits a production company did not use because it transferred them.)

§§ 7 & 10(f) - REQUIRED REGULATIONS

The bill requires the CCCT, with the digital media and motion picture commission's advice, to adopt regulations to carry out its provisions. It also requires the office to adopt regulations on tax credit certification and administration, including an application procedure and procedures for recapturing unused production tax credits.

(**COMMENT:** These regulation requirements appear to overlap in that the bill requires both the CCCT and the office to adopt implementing regulations for the tax credits.)

COMMENT

The bill has several ambiguous provisions, particularly in the sections establishing the tax credits (§§ 8-10). Comments on the bill are interspersed with the analysis above and all are labeled.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea 29 Nay 0 (03/14/2006)